

## R E M A R K S

Careful review and examination of the subject application are noted and appreciated.

### CLAIM REJECTIONS UNDER 35 U.S.C. §102

The rejection of claims 1-3, 15-17, 22 and 23 under 35 U.S.C. §102 as being anticipated by Henson (U.S. Patent No. 6,158,014) is respectfully traversed and should be withdrawn.

The Federal Circuit has stated that "[a]nticipation requires the presence in a single prior art reference disclosure of **each and every element** of the claimed invention, **arranged as in the claim.**" The Federal circuit has added that the anticipation determination is viewed from one of ordinary skill in the art: "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention."

Henson is directed to automatic detection of 8B/10B data rates (Title of Henson). In contrast, the presently claimed invention (claim 1) provides an apparatus comprising a circuit configured to (i) generate an output having a frequency and (ii) adjust the frequency in response to a measured duration of a known time interval associated with an input data stream. Claims 15 and 16 include similar limitations. Henson does not appear to disclose or suggest a circuit configured to (i) generate an output having a frequency and (ii) adjust the frequency in response to a measured

duration of a known time interval associated with an input data stream, as presently claimed. As such, the presently claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

Specifically, assuming, *arguendo*, the circuit 100 in FIG. 1 of Henson could be considered similar to the currently claimed circuit (as suggested on page 2, line 10 of the Office Action and for which Applicant's representative does not necessarily agree), Henson does not appear to disclose or suggest a circuit configured to generate an **output** having a frequency, as presently claimed. In particular, FIG. 1 of Henson shows the circuit 100 with only an input receiving serial data. The circuit 100 in FIG. 1 of Henson is not shown having an output. Since the circuit 100 in FIG. 1 of Henson does not appear to have an output, it follows that Henson does not disclose or suggest a circuit configured to generate an output having a frequency, as presently claimed. As such, the presently claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

Furthermore, the Office Action fails to present any evidence or convincing line of reasoning that one of ordinary skill in the field of the invention would consider a clock speed of the deserializer 115, which is internal to the circuit 100, to be the same as the presently claimed output having a frequency. Therefore, the Office Action does not appear to have met the Office's burden to factually establish that a single prior art

reference discloses or suggests each and every element of the presently claimed invention, arranged as in the present claims (see MPEP §2131). As such, the presently claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

Furthermore, Henson does not appear to disclose or suggest a circuit configured to adjust the frequency of an output in response to **a measured duration of a known time interval associated with a predetermined bit pattern occurring in an input data stream**, as presently claimed. Henson appears to be silent regarding either (i) a measured duration of a known time interval associated with a predetermined bit pattern occurring in an input data stream or (ii) measuring the known time interval between occurrences of a predefined bit pattern in the data stream using a clock, as presently claimed. In contrast to the presently claimed invention, Henson discloses examining a serial bitstream for a comma pattern and inferring a data rate of the serial bitstream from 10-bit characters following the comma pattern (see FIGS. 2 and 3 and column 2, line 35 through column 5, line 38 of Henson).

One of ordinary skill in the field of the presently claimed invention would not consider examining a serial bitstream for a comma pattern and inferring a data rate of the serial bitstream from 10-bit characters following the comma pattern to be the same as (i) **measuring the known time interval between occurrences of a predefined bit pattern in the data stream using a**

**clock** or (ii) adjust the frequency (of an output) in response to a **measured duration of a known time interval associated with a predetermined bit pattern occurring in an input data stream**, as presently claimed. Therefore, Henson does not disclose or suggest each and every element of the presently claimed invention, arranged as in the present claims as required by MPEP §2131. As such, the presently claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

With respect to claims 2 and 3, the Office Action fails to present any evidence or convincing line of reasoning why one of ordinary skill in the field of the presently claimed invention would consider Column 4, line 58 through column 5, line 37 as necessarily disclosing or suggesting either (i) an input data stream comprises one or more time intervals as presently claimed or (ii) time intervals delimited by periodic events in the input data stream. Applicant's representative respectfully traverses the Examiner's suggestion that Henson inherently discloses that the input data stream comprises one or more of said time intervals (see page 2, lines 16-19 of the Office Action). Inherency requires certainty of results, not mere possibility (see, e.g., *Ethyl Molded Products Co. v. Betts Package, Inc.*, 9 U.S.P.Q. 2d 1001 (E.D.Ky 1988)). Applicant's representative respectfully requests that the Examiner either provide a clear and concise explanation of how the cited portion of Henson reads on the specific limitations of the presently pending claims 2 and 3 or withdraw the rejections.

With Respect to claim 22, Henson does not appear to disclose or suggest that the predefined bit pattern comprises a packet identifier field of a SOF packet as presently claimed. Specifically, the cited text of Henson reads:

The invention provides methods and apparatus for implementing a technique for determining a data rate of a serial bitstream using pattern recognition and for matching a clock speed of a deserializer to that data rate. The invention is explained below in the context of a Fibre Channel network as an illustration of a preferred implementation. However, the invention may have applicability to networks with similar characteristics to Fibre Channel networks. For example, the invention is applicable to other networks which use an 8B/10B encoding scheme, such as Gigabit ethernet and NGIO.

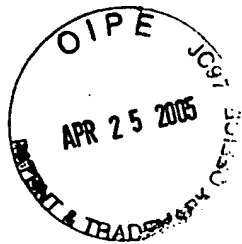
In a preferred implementation, a deserializer in a port connected to a network receives a serial bitstream. The deserializer synchronizes to the character boundaries in the bitstream using a specified pattern. The deserializer then generates a series of multiple-bit width characters from the serial bitstream. The deserializer supplies these characters to pattern recognition logic in a network device. The pattern recognition logic examines the characters received by the deserializer to find certain patterns corresponding to available data rates of the network device. Using these patterns, the network device determines the data rate of the serial bitstream. In addition, in one implementation, the network device uses the determined data rate of the serial bitstream to adjust the clock speed of the deserializer to match the data rate of the bitstream (column 3, lines 35-61 of Henson).

Nowhere in the above cited text does Henson appear to disclose or suggest the predefined bit pattern comprises a packet identifier field of a SOF packet, as presently claimed. Furthermore, the

Office Action later states that Henson does not disclose a start-of-frame (SOF) packet (see section 6, lines 4-5 on page 3 of the Office Action). Therefore, Henson does not appear to disclose or suggest each and every element of the presently claimed invention, arranged as in the present claims as required by MPEP §2131. As such, the presently pending claim 22 is fully patentable over the cited reference and the rejection should be withdrawn.

With respect to claim 23, the Office Action fails to specifically identify which element of FIG. 1 of Henson is considered to correspond to the presently claimed counter circuit. Furthermore, the Office Action fails to present any evidence or convincing line of reasoning why one of ordinary skill in the field of the invention would consider any of the circuits shown in FIG. 1 of Henson to be the same as the presently claimed counter circuit. Therefore, The Office Action fails to meet the Office's burden to factually establish that Henson discloses or suggests each and every element of the presently claimed invention, arranged as in the present claims (MPEP §2131). As such, the presently claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

Claims 2-14 and 17-25 depend, directly or indirectly, from either claim 1 or claim 16 which are believed to be allowable. As such, the presently claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.



**CLAIM REJECTIONS UNDER 35 U.S.C. §103**

The rejection of claims 4, 5 and 25 under 35 U.S.C. §103 as being unpatentable over Henson in view of the background section of the present application is respectfully traversed and should be withdrawn.

The rejection of claims 6-13, 18-21 and 24 under 35 U.S.C. §103 as being unpatentable over Henson in view of Jones (U.S. Patent No. 6,407,682) is respectfully traversed and should be withdrawn.

With respect to claims 4, 5 and 25, the characterization of the background section of the present application as admitted prior art is respectfully traversed. No such admission appears to have been made.

Furthermore, with respect to claim 4, the Office Action fails to meet the Office's burden to factually establish a suggestion or motivation for combining or modifying references (MPEP §2142). Specifically, the Office Action fails to present evidence or a convincing line of reasoning why modifying Henson from operating according to the Fibre Channel protocol to operating according to the USB protocol would be considered by one of ordinary skill in the art as improving the functionality of Henson's system. In particular, modifying the circuit of Henson to implement the USB protocol would appear to make Henson's system unsatisfactory for its intended purpose (i.e., providing a Fibre Channel node port) and, therefore, there is no suggestion or motivation to make the proposed modification (see MPEP §2143.01).

Furthermore, the Federal Circuit has held that the suggestion to modify or combine references MUST be found in the prior art itself, not merely in the Applicant's disclosure. Clearly, the background section of the present application is part of the Applicant's disclosure and, therefore, cannot provide the suggestion for modifying Henson. Therefore, the Office Action fails to meet the Office's burden to factually establish a *prima facie* case of obviousness (MPEP §2142). As such, the presently claimed invention is fully patentable over Henson and the rejection should be withdrawn.

Furthermore, with respect to claim 5, contrary to the suggestion on page 4, lines 4-5 of the Office Action, the cited portion of the background section appears to be silent regarding "adjusting the frequency within 0.25% of a host data rate." As such, the presently claimed invention is fully patentable over the cited references and the rejection should be withdrawn.

Claims 2-14 and 17-25 depend, directly or indirectly, from either claim 1 or claim 16 which are believed to be allowable. As such, the presently claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

Accordingly, the present application is in condition for allowance. Early and favorable action by the Examiner is respectfully solicited.


The Examiner is respectfully invited to call the Applicant's representative should it be deemed beneficial to further advance prosecution of the application.



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Respectfully submitted,

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